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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.609 OF 2007
IN
WRIT PETITION NO.5840 OF 2005

Shri Mahaling Pandurang Mali ...Applicant

v/s.

Shree Balasaheb Mane Shikshan
Parasarak Mandal & ors. ...Respondents

Mr.A.M.Joshi for the Applicant
Mr.N.V.Bandiwadekar for the Respondent nos. 1 & 2
A.P.Vanarse, AGP present

CORAM : B.H.MARLAPALLE,J.
DATED : 20th November, 2007

P.C.

Heard Mr. Joshi, the learned counsel for the applicant and Mr. Bandiwadekar, the learned counsel for the respondent nos. 1 and 2 and Mr. Vanarse for respondent no.3. Respondent no.4 is not necessary party.

2. Respondent nos. 1 and 2 have filed writ petition no. 5840/2005 and challenged the judgement and order dated 22-2-2005 passed by the School Tribunal thereby allowing appeal no. 174/1998 filed by the present applicant. The Petition was admitted on 9-9-2005 and by way of interim relief the impugned order was stayed to

the extent of payment of backwages.

3. There is no doubt that the interim order was passed by this Court exparte and,therefore, civil application has been filed praying for either vacating the interim order or in the alternate to direct the management to deposit the amount of full backwages with the Registry of this Court and to allow the applicant to withdraw the entire amount or 50% of the amount of backwages pending the hearing and final disposal of the writ petition.

4. The operative part of the impugned order passed by the school tribunal reads as under:

> "1) Respondent Nos. 1 to 3 are directed to reinstate the appellant to its original post since the date of his termination and to give him other incidental benefits such as continuity of service etc.
>
> 2) Respondent Nos. 1 and 3 are directed to pay him backwages from the date of termination till his reinstatement."

5. Respondent Nos. 1 and 2 have filed affidavit in reply and opposed the application. It has been pointed

out by Mr. Bandiwadekar that though the School Tribunal passed the impugned order on 22-2-2005, the applicant did not report for duty and the management vide its letter dated 13-4-2005 called upon him to report for duty. In response thereof, he reported for duty on 24-4-2005 and remained absent from 1-5-2005. He was issued a show-cause notice on 15-6-2005 and on 24-6-2005 the applicant tendered his resignation which was accepted. As per Mr. Bandiwadekar the applicant was running coaching classes during the intervening period and,therefore, his claim for backwages cannot be considered. He also submitted that there was no termination of applicant's service and infact as he was running the classes and he abandoned service. These issues are pending for consideration in writ petition no. 5840/2005.

6. In the meanwhile, I am satisfied that there is no case made out to direct the respondent nos. 1 and 2 to deposit the amount of backwages in the facts and circumstances of this case. Hence, the application is rejected.

[B.H.MARLAPALLE,J.]